

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

RAMOS SANTOS RODRIGUEZ,

Petitioner,

v.

MICHAEL W. HARLOW, et al.,

Respondents.

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Civil Action No. 12-172 Erie

District Judge Sean J. McLaughlin

Magistrate Judge Susan Paradise Baxter

MEMORANDUM ORDER

Pending before the Court is Petitioner Ramos Santos Rodriguez's Motion to Quash.¹ [ECF No. 4]. For the reasons set forth below, the motion is denied and this case is dismissed.

I.

Petitioner is a state prisoner currently incarcerated at the State Correctional Institution Albion. On July 30, 2012, he commenced this action by submitting to the Clerk of Courts a document he titled a petition for a writ of habeas corpus. It did not comply with Rule 2 of the Rules Governing Section 2254 Cases In the United States District Courts and this Court's Local Rules governing actions under 28 U.S.C. § 2254 (LCvR 2254(B)). It also was not accompanied by the required \$ 5.00 filing fee or a motion to proceed *in forma pauperis*.

Accordingly, on August 1, 2001, Magistrate Judge Baxter, to whom the case was referred, issued an Order directing that: (1) the Clerk of Court mail to Petitioner the standard forms for filing a petition for writ of habeas corpus and for moving to proceed *in forma pauperis*; (2) Petitioner file the standard habeas form by August 31, 2012; and, (3) Petitioner either pay the \$5.00 filing fee when he submits the

¹ In some filings, Petitioner lists his name as "Santos Ramos Rodriguez."

standard habeas form or move to proceed *in forma pauperis*. Magistrate Judge Baxter advised Petitioner that failure to comply with the Order would result in a recommendation that this case be dismissed.

Petitioner did not comply with the August 1, 2012, Order. As a result, on September 11, 2012, Magistrate Judge Baxter issued a Report and Recommendation [ECF No. 3] in which she recommended that this case be dismissed without prejudice for failure to prosecute. Petitioner's Objections to the Report and Recommendation were due on or before September 28, 2012. He did not file any.

On September 11, 2012, Petitioner filed the pending "Motion to Quash August 31, 2012, Order." [ECF No. 4]. There is no August 31, 2012, Order in this case. Petitioner's motion actually is regarding the habeas case pending before Magistrate Judge Baxter at Rodriguez v. Harlow, No. 1:12-cv-180 (W.D. Pa), which he commenced on August 6, 2012.² In that case, Magistrate Judge Baxter issued an Order on August 31, 2012, in which she denied Petitioner's motion to proceed *in forma pauperis* because he has an average monthly balance of \$ 68.63 in his account at the State Correctional Institution at Albion, which sum far exceeds the \$ 5.00 filing fee required to commence a habeas action, and because requiring him to pay the filing fee would not deprive him of any necessities of life at the prison.

Because the motion to quash is not regarding this case, the Court shall deny it.³ Moreover, because Petitioner explains in the motion that he commenced the habeas action pending at No. 1:12-cv-180 with the intent that it would "supersede" this habeas action and that he regards this action as "moot," [ECF No. 4 at 1-2], the Court shall dismiss this case and direct the Clerk of Courts to close it.

² Petitioner has voluntarily consented to have a U.S. Magistrate Judge conduct any and all further proceedings in the case at 1:12-cv-180, including entry of a final judgment. [ECF No. 4].

³ Petitioner filed the same motion to quash in the habeas case pending at No. 1:12-cv-180. On October 16, 2012, Magistrate Judge Baxter issued a Memorandum Order in which she denied the motion and explained to Petitioner that if he wants to proceed with that habeas case, he must pay the required \$ 5.00 filing fee.

II.

Based upon all of the foregoing, this 27th day of November, 2012, it is hereby **ORDERED** that:

1. Petitioner's motion to quash [ECF No. 4] is DENIED;
2. This case is DISMISSED; and,
3. The Clerk of Courts shall mark this case closed.

s/ Sean J. McLaughlin

Sean J. McLaughlin
United States District Judge

Cm: All parties of record.
U.S. Magistrate Judge Susan Paradise Baxter